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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92059353
Party	Defendant Tikkun LLC
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Date	03/10/2015
Attachments	Stipulation Regarding Discovery Process - 92059353.pdf(222092 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 4,432,789
Mark: HISTIACIL
Registered: November 12, 2013

SANOFI and SANOFI-AVENTIS DE
MEXICO SA DE CV

Petitioner,

v.

TIKKUN LLC,

Registrant.

Cancellation No. 92059353

STIPULATION REGARDING DISCOVERY PROCESS

Pursuant to 37 C.F.R. §§ 2.120(a)(2), 2.120(a)(3) and 2.1117(c) and Trademark Trial and Appeal Board (the “Board”) Manual of Procedure §§ 501.02 and 510.03, Tikkun LLC (“Tikkun” or “Registrant”), Sanofi and Sanofi-Aventis de Mexico SA de CV (“Sanofi Mexico” and, together with Sanofi, “Petitioner”) hereby stipulate and agree to the modifications to the discovery process set forth below.

WHEREAS on September 19, 2014, Sanofi moved to amend its Petition to Cancel U.S. Registration No. 4,432,789 in order to add a claim of misrepresentation under Section 14(3) of the Lanham Act, 15 U.S.C. § 1064(3), to its earlier-filed claim regarding non-use and to join Sanofi Mexico as a party;

WHEREAS Tikkun consented to the motion to amend but disputed the merits of the misrepresentation claim, reserved its right to move to dismiss or otherwise challenge that

claim and, in its Answer to the Amended Petition for Cancellation, filed December 15, 2014, asserted affirmative defenses of failure to state a claim and lack of standing;

WHEREAS on January 5, 2015, Petitioner served initial disclosures and discovery requests relating to both its non-use claim and its misrepresentation claim and subsequently agreed to extend the deadline for Registrant to serve its initial disclosures and its responses to discovery to March 10, 2015;

WHEREAS Registrant stated its intent to move for judgment on the pleadings as to the misrepresentation claim in light of the recent entry of judgment reversing the Board's decision in *Bayer Consumer Care AG v. Belmora, LLC*, 110 U.S.P.Q.2d 1623 (T.T.A.B. 2014), *rev'd Belmora LLC v. Bayer Consumer Care AG & Bayer Healthcare LLC*, No. 1:14-cv-00847-GBL-JFA, 2015 WL 518571 (E.D. Va. Feb. 6, 2015);

WHEREAS the parties are discussing whether to proceed by motion or otherwise with respect to that claim;

WHEREAS the parties do not wish to engage in unnecessary discovery or disputes regarding Petitioner's misrepresentation claim if that claim and Sanofi Mexico will be dismissed or withdraws from the proceeding; and

WHEREAS the parties have agreed to proceed with discovery relating solely to Petitioner Sanofi's non-use claim, but wish to do so in a fair and orderly manner.

NOW THEREFORE, the parties hereby agree and stipulate as follows:

1. Registrant's Initial Disclosures relating to Sanofi's non-use claim are due by March 10, 2015.

2. Registrant's responses to Interrogatory Nos. 4-5 and 11-14 and to Document Request Nos. 1 and 12-17 of Petitioner's First Set of Discovery Requests, to the extent each of those requests relates to Sanofi's claim of non-use, shall be due by March 10, 2015.

3. Petitioner agrees that no information, documents or things produced by Registrant pursuant to Paragraph 2, no matter how designated with respect to confidentiality, may be communicated, made available, made known or otherwise disclosed to or shared with Sanofi Mexico in any manner unless a final determination is made that the misrepresentation claim is not dismissed or withdrawn and that Sanofi Mexico shall remain a party to the proceeding. As between Sanofi and Tikkun, the information, documents and things produced in response to discovery regarding the non-use claim shall be handled in accordance with the Board's Standard Protective Order.

4. Subject to Paragraph 6, all discovery obligations, for either party, relating to the claim of misrepresentation under § 14(3) shall be suspended until a final decision is entered regarding the dismissal or withdrawal of that claim and regarding Sanofi Mexico's standing in the proceeding. For the avoidance of doubt, the following discovery obligations are suspended: (a) Registrant's time to serve initial disclosures relating to the misrepresentation claim, (b) Registrant's time to respond to Petitioner's First Set of Discovery Requests for all requests other than those enumerated in Paragraph 2 above, (c) each party's time to serve initial or additional discovery relating to the claim of misrepresentation, and (d) each party's time to notice and take depositions relating to the claim of misrepresentation.

5. Without prejudice to either party's right to move for extension or suspension of discovery deadlines, the parties are not at this time seeking to alter the deadline for the close of discovery, currently set for June 4, 2015, for discovery relating to Petitioner's claim of non-use. However, in the interest of an efficient and orderly proceeding and subject to Paragraph 6, if a final decision regarding dismissal or withdrawal of Petitioner's misrepresentation claim has not been entered by thirty-five (35) days prior to the close of discovery as set or reset, the parties agree to request suspension of the proceedings until such decision is entered.

6. If Petitioner notifies Registrant in writing (which may be by email) that it does not intend to withdraw voluntarily its claim of misrepresentation and/or to withdraw voluntarily Sanofi Mexico as a party, Registrant shall have thirty (30) days to (a) file a motion seeking dismissal of such claim and party (whether by motion for judgment on the pleadings or otherwise) (the "Motion") or (b) serve responses to all outstanding discovery requests from Petitioner's First Set of Discovery Requests. Without prejudice to Registrant's right to seek suspension of the proceeding pending disposition of the Motion, the deadline for all other discovery obligations relating to the misrepresentation claim shall be extended by the number of days between the date the parties enter this stipulation and the date Petitioner provides written notice that it will not withdraw the claim and/or party voluntarily.

7. Nothing herein shall enlarge either party's rights regarding the number or length of depositions as provided by the Federal Rules of Civil Procedure, the Trademark Rules or the TBMP. In the event that either party seeks to extend the deadline for the taking

of depositions in order to depose a witness as to both the non-use claim and the misrepresentation claim, the other party shall consent to such extension.

Dated: March 10, 2015

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

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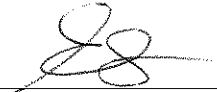
SO ORDERED:

Date: _____, 2015

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **STIPULATION REGARDING DISCOVERY PROCESS** was served on Petitioner this 10th day of March, 2015 by delivering a true and correct copy of same by email and first class mail to:

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Edith R. Lopez